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DIGEST OF WATER POLLUTION CONTROL LEGISLATION: WASHINGTON

Public Health Service
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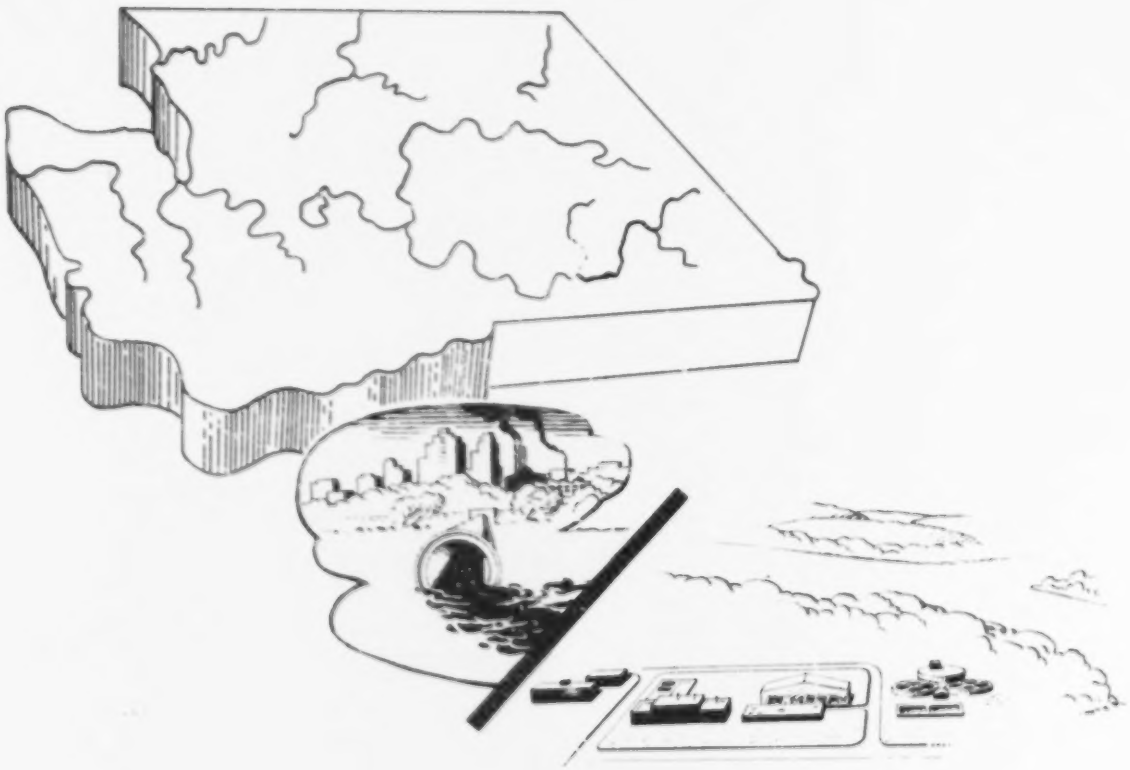

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U.S. DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
Public Health Service

Section 3 of the Federal Water Pollution Control Act (33 U.S.C. 466b) directs the Public Health Service to "encourage the enactment of improved and, so far as practicable, uniform State laws relating to the prevention and control of water pollution."

This Digest is one of a series prepared by the Public Health Service as a service to the States and others interested in these objectives. Cooperation of State officials in the preparation of these digests is gratefully acknowledged.

September 1958

DIGEST OF WASHINGTON WATER POLLUTION CONTROL LEGISLATION

I. GENERAL STATEMENT

The Pollution Control Commission, an agency of the State of Washington, is responsible for administering and enforcing the State Water Pollution Control Act of 1945, as amended in 1949 and 1955. The Commission has broad authority under the Act to control and prevent pollution of State waters by issuing permits to discharge wastes from industrial or commerical operations into State waters, specifying the conditions under which wastes may be so discharged, setting standards which indicate pollution of State waters, and by adopting rules, regulations, and standards, consistent with available and reasonable methods of preventing pollution, for carrying out the provisions of the Act (Revised Code of Washington, Title 43, Ch. 54, sec. 010; Title 90, Ch. 48, secs. 010-150; Title 90, 1955 Supp., Ch. 48, secs. 160-210). 1/

The State Department of Health is authorized to administer and enforce a number of different statutes relating to water pollution control. The duties of the State Department of Health primarily involve enforcing laws and regulations to prevent pollution of county and local water supplies, establishing and enforcing sanitary rules and regulations, approving plans by sewer districts for the disposal and treatment of sewerage and other wastes, investigating and making appropriate orders for the disposal of wastes by municipalities and, in emergencies, making and enforcing orders in local matters regarding public health and sanitation (Title 35, Ch. 88, sec. 090; Title 43, Ch. 20, sec. 010; Title 43, Ch. 20, sec. 050; Title 56, 1955 Supp., Ch. 08, sec. 010; Title 70, Ch. 54, sec. 040). The Director

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1/ Citations in this digest refer to the Revised Code of Washington, Loose-leaf Supplement (1952) and the 1955 Cumulative Supplement thereto, unless otherwise indicated.

of the State Department of Health, who is also Chairman and Executive Officer of the State Board of Health, is responsible for enforcing all laws and all rules, regulations, and orders of the Board of Health to protect the public health and to improve sanitary conditions in the State (Title 43, Ch. 20, sec. 010).

The State Department of Conservation and Development has broad administrative, advisory, and planning authority relating to water pollution control. These functions are carried out primarily by the division of Water Resources within the Department of Conservation and Development.

The Division of Water Resources has supervisory authority over public waters within the State and over their appropriation, diversion and use; inspects the construction of all systems and plants pertaining to the use of water; may require changes necessary to safety of life and property in such construction and maintenance; and make recommendations to the Governor for legislation to improve the control and development of water resources of the State (Title 43, Ch. 21, sec. 130).

The Director of Fisheries and the Director of Game must approve in writing the plans and specifications for the construction of projects that will use, divert, obstruct, or change the natural flow or bed of any river or stream or that will utilize any waters of the State or materials from stream beds. The construction of such projects without the required approval is a public nuisance subject to abatement, and violation of the requirement is a misdemeanor (Title 75, Ch. 20, sec. 100).

The State Oil and Gas Conservation Committee exercises authority over oil and gas wells as well as over all wells drilled in search of oil and gas and over wells drilled to obtain subsurface or stratigraphic information in connection with oil and gas exploration, to prevent the pollution of

fresh water supplies by oil and gas or salt water and to regulate the disposal of salt water or oil field brines (Title 78, Ch. 52, secs. 160(3), 170(4)).

An interstate compact commission consisting of five members was authorized in 1953 to consider, approve, and enter into an agreement or compact, subject to ratification by the State legislature, with Idaho, Montana, Nevada, Oregon, Utah, and Wyoming, regarding the appropriation and use of the waters of the Columbia River (Title 43, 1955 Supp., Ch. 57, secs. 010,020).[2/]

II. ADMINISTRATIVE ORGANIZATION

A. Pollution Control Commission

1. Composition and Organization

The State of Washington Pollution Control Commission consists of the directors of five State agencies, namely, the Department of Conservation and Development, the Department of Fisheries, the Department of Game, the Department of Health, and the Department of Agriculture. Members of the Commission, while acting as such, receive no additional compensation for their services other than traveling and subsistence expenses. The Commission elects its own chairman and may recommend a Director who is appointed by the Governor and subject to removal at the pleasure of the Governor. The Director has charge of operating, staffing, directing, coordinating, and supervising the activities of the Commission. The Chief Engineer of the Department of Health is Technical Secretary of the Commission. The Technical Secretary may be assisted by technical advisers

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2/ It is anticipated that the proposed Columbia Interstate Compact between Washington, Oregon, Idaho, Montana, Wyoming, Nevada, and Utah providing for the management and control of the water resources of the Columbia River system will be submitted to the legislature of the State of Washington by the Columbia Interstate Compact Commission.

appointed by the members of the Commission from their respective departments. Technical advisers receive no additional salary or wages for their services. The Commission must meet at least bimonthly. Special meetings may be called by the chairman or by three members. Three members constitute a quorum (Title 43, Ch. 54, secs. 010-070).

2. Powers and duties

a. Development of comprehensive program; setting standards for limits of pollution and quality of water

The Commission has the authority to control and prevent the pollution of all waters of the State and to enforce the Water Pollution Control Act. It may adopt rules, regulations, and standards consistent with known, available, and reasonable methods of preventing pollution and consistent with the public welfare which are necessary for carrying out the purposes of the Act.

The Commission is authorized to set standards based upon determination of the qualities and properties of water which indicate a polluted condition that is or may be injurious to the public health, to any industries, to any lawful occupation in which State waters are used, to any agricultural or horticultural pursuits,to livestock industries, to the use of State waters for domestic animals, to use of State waters by the State or by any person, to any fish or other aquatic life, migratory birds, beneficial animal or vegetable life in such waters which may be destroyed, or to their growth or propagation which may be prevented or injuriously affected (Title 90, Ch. 48, secs. 030, 070).

b. Issuance of permits and review of plans and specifications

The Commission issues permits authorizing discharge after June 8, 1956, of liquid or solid wastes into the waters of the State from a commerical or industrial operation, unless it finds that the disposal of

wastes, as proposed in the application for a permit, will unduly pollute State waters in violation of public policy. Any person who, after June 8, 1955, disposes of waste material from a commercial or industrial operation into State waters must, within one year, secure a permit or "cease disposing of such waste material" unless a request for a hearing or an appeal is taken, pending the outcome of which this requirement is ineffective except in case of emergency affecting public health (Title 90, 1955 Supp., Ch. 48, secs. 160, 180).

Applications for permits for the discharge of waste material must contain a description of the operation, the quantity and type of waste material sought to be disposed of, the proposed method of disposal, and any other relevant information required by the Commission. The Commission specifies in each permit the conditions necessary to avoid undue pollution and the conditions under which waste material may be disposed of by the permittee. Permits may be either temporary or "permanent", but are not valid for more than five years from date of issuance. Should the Commission fail to act on an application for a permit within 60 days after it has been filed, the applicant is considered to have received a temporary permit. The denial of an application for a permit and the specification of conditions or terms in a permit are Commission orders for purposes of an appeal. A permit is subject to termination upon 30 days' notice in writing if the Commission finds:

(1) That it was procured by misrepresentation of any material fact or by lack of full disclosure in the application;

(2) That there has been a violation of the conditions of the permit;

(3) That a material change in quantity or type of waste disposal exists.

If a material change in the State waters utilized creates a dangerous degree of pollution, the Commission may specify additional conditions in outstanding permits (Title 90, 1955 Supp., Ch. 48, secs. 170, 180, 190, 200, 210).

The Commission also must review and approve plans and specifications for the construction of new sewerage systems, sewage treatment or disposal plants or systems, or for improvements or extensions of existing sewage systems or treatment or disposal plants before construction may begin (Title 90, Ch. 48, sec. 110).

c. Enforcement

When the Commission finds that a person is violating or is about to violate any provision of the Act, or if he fails to control the polluting content of waste discharged or to be discharged into any waters of the State, it notifies such person of its determination by registered mail. Within 15 days from receipt of notification, the person must file with the Commission a full report stating what steps have been and are being taken to control the waste or pollution. The Commission then issues an appropriate order and notifies the person thereof by registered mail (Title 90, Ch. 48, sec. 120).

The Commission must grant a hearing, upon application therefor filed within 15 days from receipt of a Commission order by any person who feels aggrieved by such order. At the hearing the petitioner may appear, present witnesses, and submit evidence. After the hearing the Commission makes its order, and unless appeal is taken therefrom, it becomes final. The order is subject to review and trial de novo, upon petition filed within 15 days of its issuance, in the superior court of the county in which the affected system or plant or some portion of it is situated. Except in case

of an emergency affecting the public health, orders of the Commission are stayed pending hearing before the Commission, and in case of an appeal, pending final determination of the matter by the court. Any order of the Commission is subject to modification or revision by the Commission upon the petition of any person adversely affected (Title 90, Ch. 48, sec. 130). The willful violation of any provision of the Act or of any final written order of the Commission or of a court pursuant thereto is punishable by a fine of not more than $100.00 and costs, or by imprisonment in the county jail for not more than one year, or by both. Each day the violation occurs is a separate and additional violation (Title 90, Ch. 48, sec. 140).

It is unlawful for any person to discharge or cause to be discharged into State waters any matter that causes or tends to cause a polluted condition of the water as determined by the Commission. The Commission may bring any action at law or in equity in the name of the State necessary to carry out the provisions of the Act (Title 90, Ch. 48, sec. 080). When the Commission finds that an emergency exists on account of any discharge or threatened discharge of waste matter which pollutes, tends to pollute, or contributes to the pollution of State waters, it may proceed with an action to enjoin or abate the discharge or threatened discharge (Title 90, Ch.48, sec. 060).

d. Cooperation with other public and private agencies

The Commission may cooperate with the Federal Government, accept grants of Federal funds for carrying out the purposes of the Act, and make any application or report required by an agency of the Federal Government as an incident to receiving such grants. The Commission may cooperate also with appropriate agencies of neighboring States, enter into

contracts, and make contributions toward interstate projects to carry out the purposes of the Act (Ttile 90, Ch. 48, secs. 040, 050).

e. Administrative powers

The Commission or its agents are authorized to enter at all reasonable times in or upon any property to inspect and investigate conditions relating to the pollution, or the possible pollution of any State waters. The Commission may request and receive the assistance of any educational institution or State agency in carrying out the provisions of the Act (Title 90, Ch. 48, secs. 090, 100). The Commission makes its own rules, regulations, and procedures (Title 43, Ch. 54, sec. 040).

3. Preservation of existing rights and remedies

The Water Pollution Control Act does not repeal any other laws pertaining to the pollution of State waters unless they directly conflict with the Act (Title 90, Ch. 48, sec. 150).

4. Statement of Policy; Severability

It is the policy of the State of Washington to maintain the highest possible standards to insure the purity of all State waters consistent with public health and public enjoyment thereof, the propagation and protection of wildlife, birds, game, fish, and other aquatic life, and the industrial development of the State, and to that end require the use of all known, available and reasonable methods by industries and others to prevent and control the pollution of the waters of the State (Title 90, Ch. 48, sec. 010).

The act contains a severability clause (Laws of Washington, ch. 216, sec. 23 (1945)).

B. State Department of Health

1. Composition and organization

The Washington State Board of Health, quasi legislative and judicial, assists the Director of the State Department of Health, and the Chairman and Executive Officer of the Board is chief executive officer of the Department of Health. The Board consists of the Director, who is Executive Officer and who must be an experienced physician, and four other persons experienced in matters of health and sanitation. The Director and members of the Board are appointed by the Governor and the Director is Chairman and executive officer of the Board (Title 43, Ch.20, sec. 030).

2. Powers and duties

a. Board of Health

The State Board of Health supervises all matters relating to the preservation of the life and health of the people of the State, and may prescribe special or standing orders or regulations regarding sanitary matters which are best controlled by universal rule (Title 43, Ch. 20, sec. 050). It prescribes sanitary rules for the disposal of wastes from hotels and lodging house (Title 70, Ch. 62, sec. 090). The Board may make and enforce orders in local matters, when in its opinion an emergency exists and the local board of health has failed to act with sufficient promptness or efficiency, or when no local board has been established. All officers and employees of the State or of any county, city, or township are required to enforce sanitary rules and regulations adopted by the State Board, and failure or refusal to enforce such regulations by any person required by law to do so may be punished by a fine of fifty dollars upon first conviction, and of not less than one hundred dollars upon second conviction (Title 43, Ch. 20, sec. 050). The Board also reports annually to the Governor and makes suggestions for legislation (Title 43, Ch. 20, sec. 100).

b. Department of Health

The Director of the Department of Health exercises all the powers and performs all the duties prescribed by law concerning public health; investigates sanitary conditions in the State; enforces all laws to protect public health and improve sanitary conditions, including laws to protect municipal water supplies from pollution, and enforces all rules, regulations, and orders of the State Board (Title 43, Ch. 20, sec. 010).

The Director must approve in writing comprehensive plans for disposal and treatment of sewage and other wastes by sewer districts, consisting of one or more counties or other political subdivisions (Title 56, 1955 Supp., Ch. 08, sec. 020). He must examine existing conditions and make a full report advising county commissioners and mayors of cities or towns on the improvement of sanitary conditions, the disposal of garbage and sewage, and on obtaining a pure water supply, when requested by local officials (Title 70, Ch. 54, sec. 040). The Director of the Department of Health is also required to investigate systems of waste disposal in cities with a population of 100,000 or more which are not located on tidewater, and if he determines that any system of disposal is or may be injurious or dangerous to health, he is required to order the city to provide for and maintain a system of disposal not injurious or dangerous to health (Title 35, Ch. 88, sec. 090).

3. Enforcement

The enforcement authority of the Department of Health is exercised principally through the issuance by the Board of Health of rules, regulations, and orders, the violation of which may amount to a public nuisance subject to abatement and to punishment as a misdemeanor (Title 43, Ch. 20, sec. 050; Title 9, Ch. 66, secs. 010, 030, 040).

III. MISCELLANEOUS STATUTORY PROVISIONS RELATING TO WATER POLLUTION

Cities with a population of 100,000 or more which are not located on tidewater may not discharge sewage, garbage, or other refuse into any waters used or intended to be used for human or animal consumption or domestic purposes (Title 35, Ch. 88, sec. 080).

Depositing or allowing to be deposited in a spring, well, stream, or lake, the water of which is or may be used for drinking purposes, or on property owned, leased, or otherwise controlled by a municipal or other corporation, or person as a watershed or drainage basin for a public or private water system, any matter or thing dangerous or deleterious to health, or any matter or thing which may or could pollute the water of the spring, well, stream, lake or water system, is a gross misdemeanor (Title 70, Ch. 54, sec. 010).

Any person in charge of a waterworks furnishing water for public or private use, who knowingly permits any act or omits any duty or precaution as a result of which the purity or healthfulness of the water supplied becomes impaired, may be guilty of a gross misdemeanor (Title 70, Ch. 54, sec. 020).

A person who places or causes to be placed within a watershed from which a city or municipal corporation of an adjoining State obtains its water supply, any substance which either by itself or in connection with other matter will corrupt, pollute, or impair the quality of the water supply, or the owner of a dead animal who knowingly leaves or causes to be left the carcass or any portion thereof within such a watershed in such condition as to in any way corrupt or pollute the water supply, may be punished by fine (Title 70, Ch. 54, sec. 030).

Every act which unlawfully befouls a lake, navigable river, bay, stream, or basin is a public nuisance, and committing or maintaining a public nuisance for which no special punishment is prescribed, or omitting or refusing to perform any legal duty relating to the removal of such nuisance is a misdemeanor (Title 9, Ch. 66, sec. 010 (3), Ch. 66, sec. 030).

It is a public nuisance to throw or deposit any offal or other offensive matter, or the carcass of any dead animal, in any watercrouse, stream, lake, pond, spring, well, or common sewer or in any manner to corrupt or render unwholesome or impure the water of any such spring, stream, pond, lake, or well to the injury or prejudice of others (Title 7, 1955 Supp., Ch. 48, sec. 140 (2)).

In addition to criminal prosecutions, actions in abatement and civil actions for damages may be brought against persons committing a public nuisance (Title 7, Ch. 48, secs. 180, 200). A public nuisance may be abated by any authorized public body or officer, and any person may abate a public nuisance which is specially injurious to him by removing, or if necessary, destroying, the thing which constitutes it without committing a breach of the peace or doing unnecessary injury (Title 7, Ch. 48, secs. 220, 230; Title 9, Ch. 66, sec. 040).

Willfully or maliciously removing, damaging or destroying a sewer or drain, or a pipe or main connected with or forming a part thereof, or a ditch or flume lawfully erected for carrying water or draining land are misdemeanors (Title 9, Ch. 61, sec. 010 (9)(10)(19)).

Depositing, leaving, or keeping, any unwholesome substance on or near water, or carrying on business, trade, or manufacture on land or water which is detrimental to the public health, or depositing into any lake, creek, or

river of the State the offal from or the dead body of any animal is a gross misdemeanor (Titel 9, Ch. 66, sec. 050).

It is unlawful to discharge ballast from a vessel into the navigable portions of an inlet, bay, harbor, or river within or bordering on the State, where the water is less than 20 fathoms deep. This section does not prevent the discharge of the ballast on the beach at or above ordinary high tide in all waters where the tide ebbs and flows (Title 88, Chap. 28, sec. 060).

All water wells which contaminate other waters are required to be plugged or capped. Failure to cap or plug such wells is a misdemeanor (Title 90, Chap. 44, secs. 110, 120).

It is unlawful to lay, set, use or prepare any drug, poison, lime, medicated bait, nets, fish, berries, formaldehyde, dynamite, or other explosives in any State waters with intent to catch, take, or kill any game fish. Violation is a misdemeanor punishable by a fine or imprisonment, or by both (Title 77, Chap. 16, sec. 060).